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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/615,652

07/09/2003

Kristian DiMatteo

1001.1309103

9311

28075 7590 05/24/2010
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EXAMINER

YABUT, DIANE D

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

05/24/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/615,652	Applicant(s) DIMATTEO, KRISTIAN	
	Examiner DIANE YABUT	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20,22,24-26,34-37 and 39-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20,22,24-26,34-37 and 39-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This action is in response to applicant's amendment received 02/22/2010.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

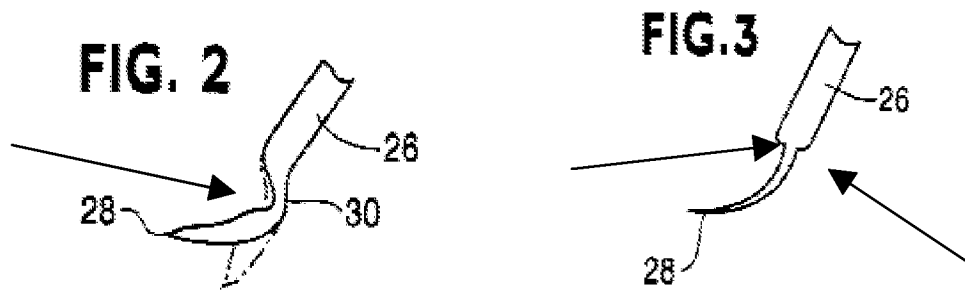
A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 20, 22, 24-26, 34-36, and 39-44 are rejected under 35 U.S.C. 102(e) as being anticipated by **Ravenscroft et al.** (U.S. Patent No. **6,007,558**).

Ravenscroft et al. disclose a conically-shaped filtering basket including a body member or apex **12** including a bore (near **36** in Figure 4), a plurality of substantially straight struts or arms **26** fixedly attached to the body member and extending therefrom, at least some distal tip of the plurality of struts having bends and being configured as an anchoring member **28** directly coupled to the distal end region of that strut of which it is a distal tip by a weakened region or reduced cross-sectional area **30** (annotated by arrows in Figures 2-3 below) immediately proximal of the anchoring member, wherein the weakened region is configured to fail releasing the anchoring member from the distal end region of that strut of which it is a distal tip, thereby separating the distal tip of the strut from the filtering device (see Figures 1-4).

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“notch” or “divet” in weakened, reduced cross-sectional area region

It is noted that although Ravenscroft et al. disclose that the weakened regions 30 flex due to a withdrawal force or a specific load, they may also be “configured to fail” or “configured to break” when a more substantial or repeated force is applied to these regions. The specified amount of force or “retrieval force” required to break the regions is not explicitly defined by the applicant, and the weakened regions of Ravenscroft et al. are capable of “breaking” or “failing” due to a certain amount of applied force, and therefore meets the limitations of the claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ravenscroft et al.** (U.S. Patent No. 6,007,558) in view of **Amrbisco et al.** (U.S. Patent No. 6,007,557).

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Ravenscroft et al. do not expressly disclose the reduced cross-sectional area being defined by an opening in the strut.

Ambrisco et al. teach a reduced cross-sectional area defined by an opening **318** in a strut **312** which can be useful in allowing a guidewire or hook to pass through for manipulation of the filter device (Figure 36C and col. 20, lines 1-15). It would have been obvious to one of ordinary skill in the art at the time of invention to provide an opening in the strut, as taught by Ambrisco et al., to Ravenscroft et al. in order to manipulate the filter device by a guidewire or hook.

Response to Arguments

5. Applicant's arguments filed 02/22/2010 have been fully considered but they are not persuasive.

6. Applicant generally argues that the claim limitations of the weakened region being configured to fail does not necessarily flow from the disclosure of Ravenscroft et al., and does not discuss a substantially or repeated force or the possibility or the capability of the weakened region to fail, as conceded by the examiner, and therefore the weakened region is not necessarily designed, configured to, or intended to fail. While the examiner agrees that the disclosure of Ravenscroft et al. does not expressly disclose that the weakened region (see annotated Figures 2-3 above) fails or that there are applied forces that cause the weakened region to fail, there appears to be no structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. There appears to be no definitive condition upon which the weakened region fails in the claims, however the present

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specification describes a condition upon which a single application of sufficient force causes the weakened region to fail or repeated application of relative lower force cause the weakened region to fail (page 5, lines 5-21), as well as no evidence contrary to the weakened region's capability of failing, and therefore the device of Ravenscroft et al. reads on the claims.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANE YABUT whose telephone number is (571)272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Diane Yabut/
Examiner, Art Unit 3734

/TODD E. MANAHAN/
Supervisory Patent Examiner, Art Unit 3734